Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

CORWIN GAINES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ROBERT D. DIMLER
11 Russell Street
Plymouth, MA 02360
(508) 747-4348

PATRICIA A. DOWNEY
Counsel of Record
THE LAW OFFICE OF
PATRICIA A. DOWNEY
11 Russell Street
Plymouth, MA 02360
(508) 830-1616

Counsel for Petitioner

200573

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED FOR REVIEW

Whether *Apprendi* (and now *Blakley*) pose a bar to the imposition of consecutive sentences where the total punishment exceeds the highest statutory maximum on any particular count.

Whether *Apprendi* and *Blakely* Establish A New, Watershed Rule Of Constitutional Procedure That Should Be Applied Retroactively Under The Teague Rule On Retroactivity.

LIST OF PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties. The petitioner, Corwin Gaines, is not a nongovernmental corporation.

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
List of Parties to the Proceeding	ii
Table of Contents	iii
Table of Cited Authorities	v
Table of Appendices	ix
Opinions Below	1
Jurisdiction	1
Federal Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations	1
Statement of the Case	4
A. Basis For Federal Jurisdiction In The Court Below	7
Argument	8
1. Introduction	8
2. Apprendi (and now Blakley) pose a bar to the imposition of consecutive sentences where the total punishment exceeds the highest statutory maximum on any particular count	9

Contents

Page

3. *Apprendi* and *Blakely* Establish A New, Watershed Rule Of Constitutional Procedure That Should Be Applied Retroactively Under The *Teague* Rule On Retroactivity 14

a. *Apprendi* Establishes A New, Watershed Rule Of Constitutional Procedure That Should Be Applied Retroactively Under The Teague Rule On Retroactivity 14

c. *Blakely* Establishes A New, Watershed Rule Of Constitutional Procedure That Should Be Applied Retroactively Under The *Teague* Rule On Retroactivity 18

d. Summary 21

Conclusion 22

TABLE OF CITED AUTHORITIES

Page

Cases:

Apprendi v. New Jersey,
530 U.S. 466 (2000) ..... *passim*

Blakely v. Washington,
542 U.S. 296 (2004) ..... *passim*

Bousley v. United States,
532 U.S. 614 (1998) 15

Cage v. Louisiana,
498 U.S. 39 (1990) 17

Coleman v. United States,
329 F.3d 77 (2nd Cir. 2003) 14, 15

Desist v. United States,
394 U.S. 244 (1969) 16

In re Winship,
397 U.S. 363 (1970) 17, 20

Mackey v. United States,
401 U.S. 667 (1971) 16

Ring v. Arizona,
536 U.S. 584 (2002) 16, 19

Saffle v. Parks,
494 U.S. 484, 495 (1990) 15

Cited Authorities

Page

Schriro v. Summerlin,
542 U.S. 348 (2004) 16, 17, 18, 19

Speiser v. Randall,
357 U.S. 513 (1958) 17

Teague v. Lane,
489 U.S. 288 (1989) ..... *passim*

United States v. Cirilo-Munoz,
404 F.3d 527 (2005) 8

United States v. Feola,
275 F.3d 216 (2nd Cir. 2001) 10

United States v. Jones,
235 F.3d 1231 (10th Cir. 2000) 11, 12, 13

United States v. Page,
232 F.3d 536 (6th Cir. 2000) 11

United States v. Price,
75 F.3d 1440 (10th Cir. 1996) 11, 12

United States v. Price,
400 F.3d 844 (10th Cir. 2005) 18, 19

United States v. Saccoccia,
58 F.3d 754 (1st Cir. 1995) 10

Cited Authorities

Page

United States v. Saccoccia,
42 Fed. Appx. 476 (1st Cir. 2002) 10, 11

United States v. Sepulveda,
330 F.3d 55 (1st Cir. 2003) 8

United States v. Smith,
240 F.3d 927 (11th Cir. 2001) 11

United States v. Sturgis,
238 F.3d 956 (8th Cir. 2001) 11

United States v. White,
238 F.3d 537 (4th Cir. 2001) 11

Statutes:

18 U.S.C. § 3006A 3

21 U.S.C. § 841(b)(1)(A)(iii) 5

21 U.S.C. § 841(b)(1)(B)(iii) 6

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1291 8

28 U.S.C. § 2244 4

28 U.S.C. § 2255 ..... *passim*

Cited Authorities

Page

Rule:

Fed. R. Crim. P. 11 21

Other Authorities:

Is *Blakely v. Washington* Retroactive?, 27 CARDOZO L. REV. 424 (2005) 18, 21

Controlled Substances Act, section 408 3

Justice for All: Analyzing Blakely Retroactivity and Ensuring Just Sentences in Pre-Blakely Convictions, 66 OHIO ST. L. J. 875 (2005) 18

Reasonable Doubt in the Rear-View Mirror: The Case for Blakely-Booker Retroactivity in the Federal System, 2005 WIS. L. REV. 1139 (2005) 18

Rethinking Retroactivity, 118 HARV.L.REV. 1642 (2005) 16

U.S.S.G. 2D1.1(c)(3) 6

U.S.S.G. 5G1.2(d) 10, 11

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The First Circuit Entered January 12, 2006 ..... 1a

Appendix B — Opinion Of The United States District Court For The District Of Massachusetts Dated September 30, 2002 ..... 4a

OPINIONS BELOW

The judgment of the United States Court of Appeals for the First Circuit in *Gaines v. Unit*ed States (1st Cir., Docket No. 01-2678) is reproduced in the Appendix.

JURISDICTION

The judgment of the United States Court of Appeals for the First Circuit upholding the District Court judgment was entered on January 12, 2006. This petition is filed within ninety (90) days of that date. The petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

FEDERAL CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

TITLE 28 U.S.C. § 2255

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
>
> Unless the motion and the files and records of the case conclusively show that the prisoner is entitled

to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.